

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY

DEPUTY

LEANNE SMITH,

Plaintiff,

CASE NO.: 1:08-cv-00606-LY

v.

Judge Lee Yeakel

LVNV FUNDING, LLC,  
RLI INSURANCE COMPANY,  
HOSTO & BUCHAN, P.L.L.C. d/b/a  
HOSTO, BUCHAN, PRATER &  
LAWRENCE, P.L.L.C. and d/b/a HOSTO,  
BUCHAN, PRATER AND LAWRENCE,  
WESTERN SURETY COMPANY,

Defendants.

ANSWER OF LVNV FUNDING LLC

Defendant LVNV Funding, LLC ("LVNV") as and for its Answer to the Complaint of Leanne Smith ("Plaintiff"), in the above-entitled matter, denies each and every allegation contained therein, unless otherwise admitted or qualified herein, and states and alleges as follows:

1. In response to paragraph 1 of Plaintiff's Complaint, LVNV admits that Plaintiff asserts various violations of law and seeks various relief, but LVNV denies that it violated any law and that Plaintiff is entitled to such relief. As such, LVNV denies that jurisdiction or supplemental jurisdiction exists. LVNV further states that declaratory relief is not available to Plaintiff as alleged.

2. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 2 of Plaintiff's Complaint and therefore denies the same.

3. In response to paragraph 3 of Plaintiff's Complaint, LVNV denies that it is a "limited liability corporation" and denies that it engages in business in Texas. To all other extents, LVNV does not dispute service in this matter.

4. LVNV denies the allegations set forth in paragraph 4 of Plaintiff's Complaint.

5. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 5 of Plaintiff's Complaint and therefore denies the same.

6. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 6 of Plaintiff's Complaint and therefore denies the same.

7. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 7 of Plaintiff's Complaint and therefore denies the same.

8. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 8 of Plaintiff's Complaint and therefore denies the same.

9. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 9 of Plaintiff's Complaint and therefore denies the same.

10. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 10 of Plaintiff's Complaint and therefore denies the same.

11. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 11 of Plaintiff's Complaint and therefore denies the same.

12. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 12 of Plaintiff's Complaint and therefore denies the same.

13. LVNV denies the allegations set forth in paragraph 13 of Plaintiff's Complaint.

14. In response to paragraph 14 of Plaintiff's Complaint, LVNV admits that Defendant RLI Insurance is its bonding company. To all other extents, LVNV states that the

Tex. Fin. Code § 392.102 speaks for itself, while denying said paragraph to the extent, if any, that it misconstrues or otherwise misinterprets said code section or case law interpreting the same.

15. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 15 of Plaintiff's Complaint and therefore denies the same.

16. In response to paragraph 16 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

17. In response to paragraph 17 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

18. In response to paragraph 18 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

19. In response to paragraph 19 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

20. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 20 of Plaintiff's Complaint and therefore denies the same.

21. In response to paragraph 21 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

22. In response to paragraph 22 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

23. In response to paragraph 23 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

24. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 24 of Plaintiff's Complaint and therefore denies the same.

25. In response to paragraph 25 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

26. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 26 of Plaintiff's Complaint and therefore denies the same.

27. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 27 of Plaintiff's Complaint and therefore denies the same.

28. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 28 of Plaintiff's Complaint and therefore denies the same.

29. In response to paragraph 29 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

30. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 30 of Plaintiff's Complaint and therefore denies the same.

31. LVNV denies the allegations set forth in paragraph 31 of Plaintiff's Complaint.

32. LVNV denies the allegations set forth in paragraph 32 of Plaintiff's Complaint.

33. LVNV denies the allegations set forth in paragraph 33 of Plaintiff's Complaint.

34. LVNV adopts by reference paragraphs 1 through 33 of this Answer as though fully set forth herein.

35. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 35 of Plaintiff's Complaint and therefore denies the same.

36. In response to paragraph 36 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

37. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 37 of Plaintiff's Complaint and therefore denies the same.

38. LVNV denies the allegations set forth in paragraph 38 of Plaintiff's Complaint.

39. In response to paragraph 39 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

40. In response to paragraph 40 of Plaintiff's Complaint, LVNV admits that Plaintiff seeks the relief set forth, but denies that Plaintiff is entitled to such relief.

41. LVNV adopts by reference paragraphs 1 through 40 of this Answer as though fully set forth herein.

42. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 42 of Plaintiff's Complaint and therefore denies the same.

43. In response to paragraph 43 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

44. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 44 of Plaintiff's Complaint and therefore denies the same.

45. LVNV has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 45 of Plaintiff's Complaint and therefore denies the same.

46. LVNV admits the allegations set forth in paragraph 46 of Plaintiff's Complaint, upon information and belief.

47. In response to paragraph 47 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

48. In response to paragraph 48 of Plaintiff's Complaint, LVNV admits that Plaintiff seeks the relief set forth, but denies that Plaintiff is entitled to such relief.

49. LVNV adopts by reference paragraphs 1 through 48 of this Answer as though fully set forth herein.

50. In response to paragraph 50 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same. LVNV further states that the case law referenced speaks for itself while denying said paragraph to the extent, if any, that it misstates or misconstrues said case law.

51. LVNV adopts by reference paragraphs 1 through 50 of this Answer as though fully set forth herein.

52. In response to paragraph 52 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

53. In response to paragraph 53 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

54. In response to paragraph 54 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

55. In response to paragraph 55 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

56. In response to paragraph 56 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

57. LVNV adopts by reference paragraphs 1 through 56 of this Answer as though fully set forth herein.

58. In response to paragraph 58 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

59. LVNV adopts by reference paragraphs 1 through 58 of this Answer as though fully set forth herein.

60. In response to paragraph 60 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

61. LVNV adopts by reference paragraphs 1 through 60 of this Answer as though fully set forth herein.

62. In response to paragraph 62 of Plaintiff's Complaint, LVNV admits that Plaintiff seeks the relief set forth therein, but denies that Plaintiff is entitled to such relief.

63. In response to paragraph 63 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

64. In response to paragraph 64 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

65. In response to paragraph 65 of Plaintiff's Complaint, LVNV admits that Plaintiff intends to seek the relief set forth therein, but denies that Plaintiff is entitled to such relief.

66. LVNV denies the allegations set forth in paragraph 66 of Plaintiff's Complaint.

67. LVNV adopts by reference paragraphs 1 through 66 of this Answer as though fully set forth herein.

68. In response to paragraph 68 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same. LVNV further states that the case law referenced speaks for itself while denying said paragraph to the extent, if any, that it misstates or misconstrues said case law.

69. LVNV adopts by reference paragraphs 1 through 68 of this Answer as though fully set forth herein.

70. In response to paragraph 70 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same. LVNV further states that the case law referenced speaks for itself while denying said paragraph to the extent, if any, that it misstates or misconstrues said case law.

71. LVNV adopts by reference paragraphs 1 through 70 of this Answer as though fully set forth herein.

72. In response to paragraph 72 of Plaintiff's Complaint, LVNV denies all allegations against it. To all other extents, LVNV has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same. LVNV further states that the case law referenced speaks for itself while denying said paragraph to the extent, if any, that it misstates or misconstrues said case law.

73. LVNV adopts by reference paragraphs 1 through 72 of this Answer as though fully set forth herein.

74. In response to paragraph 74 of Plaintiff's Complaint, LVNV admits that Plaintiff seeks the relief therein set forth but denies that Plaintiff is entitled to such relief.

75. In response to paragraph 75 of Plaintiff's Complaint, LVNV admits that Plaintiff requests a trial by jury but denies that Plaintiff is entitled to a jury trial as there has been no violation of law.

76. In response to paragraph 76 of Plaintiff's Complaint and its subparts, LVNV admits that Plaintiff seeks the relief therein set forth but denies that Plaintiff is entitled to such relief.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

#### **SECOND DEFENSE**

Any violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* and Texas law, if applicable, which LVNV denies, was not intentional and was the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

#### **THIRD DEFENSE**

Plaintiff's claims are barred by res judicata/collateral estoppel.

#### **FOURTH DEFENSE**

LVNV asserts that Plaintiff's claims are barred, in part or in whole, by the statute of limitations.

#### **FIFTH DEFENSE**

Plaintiff's claims are barred by the doctrines of laches, estoppel, acquiescence, and waiver.

#### **SIXTH DEFENSE**

Plaintiff's state law claims are preempted by the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

**WHEREFORE**, LVNV prays for an order and judgment of this Court in its favor against Plaintiff as follows:

1. Dismissing all causes of action against LVNV with prejudice and on the merits;
2. Awarding attorney fees and costs incurred in defending this matter, and,
2. Awarding LVNV such other and further relief as the Court deems just and equitable.

Respectfully submitted,

SCANLAN, BUCKLE & YOUNG, PC



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Attorneys for Defendant LVNV

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all parties of record by Certified Mail, Return Receipt Requested, on this the 10<sup>th</sup> day of October, 2008 as follows:

Ahmad Keshavaraz  
The Law Office of Ahmad Keshavaraz  
16 Court St., Suite 2600  
Brooklyn, NY 11241



David Sander